SCOTTISH STATUTORY INSTRUMENTS

2004 No. 346

HIGH COURT OF JUSTICIARY SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Extradition etc.) 2004

Made - - - -	*17th August 2004*
Coming into force - -	*18th August 2004*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(**1**), section 210 of the Extradition Act 2003(**2**) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Extradition etc.) 2004 and shall come into force on 18th August 2004.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

2.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996(**3**) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 19.12 (duty to print stated case etc.) in both places where "seven" appears there shall be substituted "twenty-one".

(3) In rule 19B.1 after paragraph (2) there shall be inserted the following:–

"(2A) On the lodging of a note of appeal under paragraph (2), the Clerk of Justiciary shall send a copy of the note to the Crown Agent.".

(4) Chapter 30 (proceedings for the execution of Irish warrants) shall be omitted.

(5) For Chapter 34 (extradition) there shall be substituted the following:–

(**1**) 1995 c. 46.
(**2**) 2003 c. 41.
(**3**) S.I. 1996/513, last amended by S.S.I. 2004/206.

"CHAPTER 34

EXTRADITION

Interpretation of this Chapter

34.1. In this Chapter–

(6) "the Act of 2003" means the Extradition Act 2003;

(7) "arrested person" means a person who has been arrested under the Act of 2003; and

(8) "required period" shall be construed in accordance with section 74(11) of the Act of 2003.

Arrest under provisional warrant

34.2.—(1) This rule applies where an arrested person is brought before the sheriff at Lothian and Borders under section 74(3) (person arrested under provisional warrant) of the Act of 2003.

(9)

(2) The Sheriff–

(a) may fix a date for a review hearing to take place before the expiry of the required period; and

(b) shall fix a date for a review hearing to take place as soon as practicable after the expiry of the required period.

(3) At a review hearing under paragraph (2), the sheriff shall ascertain, so far as reasonably practicable, the state of preparation of the parties and may fix a further hearing to take place before the extradition hearing; and this paragraph may apply more than once.

Appeals

34.3.—(1) Subject to paragraph (3), an appeal under –

(10) section 26(1) of the Act of 2003 (appeal against extradition order under Part 1) shall be made by lodging a note of appeal in Form 34.3–A;

(11) section 28(1) of the Act of 2003 (appeal against discharge at extradition hearing under Part 1) shall be made by lodging a note of appeal in Form 34.3–B;

(12) section 103(1) (appeal where case sent to Scottish Ministers) or 108(1) (appeal against extradition order) of the Act of 2003 shall be made by lodging a note of appeal in Form 34.3–C;

(13) section 105(1) (appeal against discharge at extradition hearing) or section 110(1) (appeal against discharge by Scottish Ministers) of the Act of 2003 shall be made by lodging a note of appeal in Form 34.3–D,

(14) with the clerk.

(2) Notice of an appeal mentioned in paragraph (1) shall be given by serving a copy of the note of appeal–

(a) in the case of an appeal under section 26(1), 103(1) or 108(1) of the Act of 2003, on the Crown Agent, and

(b) in the case of an appeal under section 28(1), 105(1) or 110(1) of the Act of 2003, on the arrested person.

(3) No note of appeal under this rule shall be lodged without an execution of service.

(4) In this rule , "the clerk" means–

(a) in the case of an appeal under section 26(1), 28(1), 103(1) or 105(1) of the Act of 2003, the sheriff clerk, and

(b) in the case of an appeal under section 108(1) or 110(1) of the Act of 2003, the Clerk of Justiciary.

Hearing of appeals

34.4.—(1) The sheriff clerk shall, on the making of an appeal under section 26(1) (appeal against extradition order under Part 1), 28(1) (appeal against discharge at extradition hearing under Part 1), 103(1) (appeal where case sent to Scottish Ministers) or 105(1) (appeal against discharge at extradition hearing) of the Act of 2003–

(a) request a report from the presiding sheriff; and

(b) transmit–

(i) the note of appeal;

(ii) two certified copies of the minutes of proceedings; and

(iii) any other relevant documents,

to the Clerk of Justiciary who shall fix a diet for the hearing of the appeal.

(2) The Clerk of Justiciary shall, on the making of an appeal under section 108(1) (appeal against extradition order) or 110(1) (appeal against discharge by Scottish Ministers) of the Act of 2003, request a report from the Scottish Ministers and fix a diet for the hearing of the appeal.

(3) Within 14 days of the making of an appeal, the sheriff or, as the case may be, the Scottish Ministers shall comply with the request under paragraph (1)(a) or (2).

(4) The Clerk of Justiciary shall–

(a) intimate the date of any diet fixed under paragraph (1) or (2); and

(b) send a copy of the report received from the sheriff or, as the case may be, the Scottish Ministers, to the arrested person and the Crown Agent.

(5) Subject to section 31(4) of the Act of 2003 (extension of relevant period), the High Court shall begin to hear an appeal under section 26(1) or 28(1) of the Act of 2003 within 40 days after the date on which the arrested person–

(a) was arrested under section 5 of the Act of 2003, if he was arrested under that section;

(b) was arrested under the Part 1 warrant, if he was not arrested under that section.

(6) Subject to section 113(3) of the Act of 2003, the High Court shall begin to hear an appeal under section 103(1), 105(1), 108(1) or 110(1) of the Act of 2003 within 76 days after the date on which the note of appeal is lodged.

Applications for extension of time

34.5.—(1) Subject to paragraph (2), an application seeking an extension of the relevant period under section 31(4) (extension of time limit for start of hearing) or section 113(4) (extension of time limit for start of hearing) of the Act of 2003 shall be lodged with the Clerk of Justiciary in Form 34.5, and the applicant shall serve a copy of the application on the other party in the appeal.

(2) At the diet fixed for the hearing of the appeal or an application mentioned in paragraph (1), the court may dispense with the requirements of paragraph (1).

Consent to extradition

34.6. Notice of consent to extradition shall be given–

(a) in the case of extradition to a category 1 territory, in Form 34.6–A; and

(b) in the case of extradition to a category 2 territory, in Form 34.6–B.

Post-extradition matters

34.7.—(1) A notice under section 54(4) (notice of request for consent to another offence being dealt with) of the Act of 2003 shall be in Form 34.7–A.

(2) A notice under section 56(4) (notice of request for consent extradition to another category 1 territory) of the Act of 2003 shall be in Form 34.7–B.

Part 3 warrants

34.8. Subject to section 142 of the Act of 2003, a Part 3 warrant issued by a sheriff shall be in the form set out in the Annex to Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States(**4**), with such variation as circumstances may require.".

(6) In the appendix–

(a) Forms 30.2–A (form of endorsement of warrant of arrest under section 1(1) of the Backing of Warrants (Republic of Ireland) Act 1965(**5**)), 30.2–B (form of provisional warrant under section 4 of the Backing of Warrants (Republic of Ireland) Act 1965) and 30.5 (form of consent to earlier return under section 3(1)(a) of the Backing of Warrants (Republic of Ireland) Act 1965) shall be omitted; and

(b) for Forms 34.5 (notice of waiver and consent under section 14 of, or paragraph 9 of Schedule 1 to, the Extradition Act 1989(**6**)) and 34.6(**7**) (notice of consent to return to a foreign state under section 14(3) of the Extradition Act 1989) there shall be substituted the forms set out in the Schedule to this Act of Adjournal.

Edinburgh
17th August 2004

CULLEN OF WHITEKIRK
Lord Justice General I.P.D.

(**4**) O.J. L 190, 18.7.2002, p.1.
(**5**) 1965 c. 45. Sections 1(1) and 4 were amended by the Criminal Justice and Public Order Act 1994 (c. 33), section 159.
(**6**) 1989 c. 33.
(**7**) Form 34.6 was inserted by S.S.I. 2002/517.

SCHEDULE Paragraph 2(6)(b)

FORM 34.3–A**Form of note of appeal under section 26(1) of the Extradition Act 2003**

Rule 34.3(1)(a)

IN THE HIGH COURT OF JUSTICIARY

NOTE OF APPEAL

under section 26(1) of the Extradition Act 2003

by

[A.B.] (*address*)

1.[A.B.] (*address*) ("the appellant") was arrested at (*place*) on (*date*) under section 5 of the Extradition Act 2003 [*or* under a warrant issued under Part 1 of the Extradition Act 2003].

2.On (*date*) the sheriff of Lothian and Borders at (*place*) ordered the appellant's extradition to (*country*) being a category 1 territory within the meaning of section 1 of the Extradition Act 2003.

3.The Appellant appeals to the High Court of Justiciary under section 26(1) of the Extradition Act 2003 on the grounds set out in the following paragraphs.

(Here state in brief specific numbered propositions the grounds on which it is proposed to submit that the appeal should be allowed.)

(*Signed*)

Appellant's legal representative

(*Address*)

(*Telephone number*)

(*E-mail address*)

FORM 34.3–B**Form of note of appeal under section 28(1) of the Extradition Act 2003**